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land reform

LAND SETTLEMENT AND COOPERATIVES

réforme agraire

COLONISATION ET COOPÉRATIVES AGRICOLES

reforma agraria

COLONIZACIÓN Y COOPERATIVAS



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## Preface

Land is the single greatest resource in most countries. Access to land, security of tenure, and land management all have significant implications for development. Secure access to land for the poor and vulnerable is increasingly affected by climate change, violent conflicts and natural disasters, population growth and urbanization, and demands for new energy sources such as bioenergy. Good governance in land tenure and its administration can help to reduce poverty and achieve economic development. In contrast, weak governance, has adverse consequences for society as a whole. The poor are particularly vulnerable to the effects of weak governance because they lack the resources and influence necessary to protect their rights to land. Weak governance promotes inequality between genders as poor women tend to be less literate and have fewer resources. It fosters social inequality with potentially destabilizing consequences – the rich are able to benefit from opportunities to appropriate land while the poor lose their rights to land and common property resources such as grazing lands and forests. In addition, weak governance leads to environmental degradation as corrupt officials and private interests collude to ignore controls on land use, the extraction of water and minerals, and the clearing of forests. The abuse and degradation of state land, including national parks, is a direct result of weak governance. The evasion of taxes related to property reduces the public revenues available for public services such as health care and education. The arbitrary application of the rule of law discourages investment and constrains economic development.

The increasing recognition of the importance of addressing the governance of land and natural resources has led the Land Tenure and Management Unit of the Food and Agriculture Organization of the United Nations (FAO) to focus on good governance in land tenure and land administration as one of its main activities under its present work programme. Reversing weak governance requires a willingness to overcome weaknesses and opposition from those who benefit from the situation. Several countries around the world have already recognized the need to improve their governance and have started to introduce improvements. FAO has been working with generous support from the Government of Finland since 2005 on raising awareness of the importance of this issue. It has prepared technical guidelines and other materials with various partners, including the World Bank, UN-Habitat, Transparency International, and the International Federation of Surveyors.

The articles in this issue supplement the recent publication *Good governance in land tenure and administration* (Land Tenure Studies No. 9), which provides practical advice for land professionals on improving governance in a land administration system or other land tenure arrangement. This issue opens with an article contributing to the overall discussion on land tenure and good governance. The following articles explore how governance issues should be considered in land administration development projects and how governance affects state land management. They also present important lessons to be learned from two case studies (one on Georgia, and one on the reunification of Germany).

**Paul Munro-Faure**

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## Préface

La terre est l'unique ressource dans la plupart des pays. L'accès à la terre, la sécurité de la propriété foncière et la gestion des terres ont des conséquences importantes pour le développement. Mais pour les populations pauvres et vulnérables, l'accès à la terre est de plus en plus incertain sous les effets du changement climatique, des conflits violents, des catastrophes naturelles, de la croissance démographique, de l'urbanisation et de la demande de nouvelles sources d'énergie comme la bioénergie. Une bonne gouvernance en matière de régime foncier peut contribuer à réduire la pauvreté et favoriser le développement économique. Par contre, une gouvernance déficiente a des conséquences négatives pour toute la société et vulnérabilise les pauvres qui n'ont pas les ressources et l'influence nécessaires pour protéger leurs droits à la terre. Elle accroît d'autant plus l'inégalité entre les sexes que les femmes pauvres sont généralement moins éduquées et plus démunies que les hommes. Elle est également facteur d'inégalité sociale et déstabilise la société, car les riches profitent des opportunités pour s'appropriier la terre, tandis que les pauvres perdent leurs droits à la terre et aux ressources communes que sont les pâturages et les forêts. En outre, une gouvernance déficiente accentue la dégradation de l'environnement; en effet, les fonctionnaires corrompus et les intérêts privés s'entendent pour éviter que l'utilisation des terres, l'extraction d'eau et de minéraux et le déboisement des forêts soient contrôlés. Le pillage et la dégradation des terres publiques, notamment les parcs nationaux, résultent directement d'une administration déficiente. L'évasion fiscale liée à la propriété rogne les recettes publiques disponibles pour des services publics comme la santé et l'éducation. L'application arbitraire de l'État de droit décourage l'investissement et freine le développement économique.

La reconnaissance croissante de l'importance d'une bonne gouvernance en matière d'administration foncière et des ressources naturelles a conduit l'Unité de gestion et du régime foncier de l'Organisation des Nations Unies pour l'alimentation et l'agriculture (FAO) à placer ce thème au cœur des activités de son programme de travail en cours. Pour instaurer une bonne gouvernance, il faut être résolu à pallier les faiblesses constatées et éliminer les obstacles créés par ceux qui tirent profit de la situation. Plusieurs pays ont déjà reconnu qu'ils devaient améliorer leur gouvernance et ont commencé à la réformer. Depuis 2005, avec l'appui précieux du Gouvernement finlandais, la FAO s'efforce de faire mieux connaître l'importance de cette question. Elle a notamment préparé des directives techniques et d'autres prescriptions en coopération avec d'autres partenaires, dont la Banque mondiale, UN-Habitat, Transparency International et la Fédération internationale des géomètres.

Les articles de ce numéro complètent la publication récente intitulée *Administration foncière et bonne gouvernance* (Études foncières n° 9), qui donne aux professionnels du secteur de l'administration foncière des conseils sur la façon d'améliorer la gouvernance en matière d'administration foncière. Le présent numéro commence par un article qui nourrit le débat sur les questions foncières et la bonne gouvernance. Les articles suivants explorent la manière dont la gouvernance doit être prise en compte dans les projets d'administration foncière et son impact sur la gestion des terres publiques. Ils offrent également d'importants enseignements qui peuvent être tirés de deux études de cas (l'une sur la Géorgie, et l'autre sur la réunification de l'Allemagne).

**Paul Munro-Faure**

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## Prefacio

La tierra es el mayor recurso que poseen la mayoría de los países. El acceso a la tierra, la seguridad en la tenencia y la ordenación de tierras tienen consecuencias importantes para el desarrollo. La seguridad en el acceso a la tierra para las personas pobres y vulnerables se ve cada vez más afectada por el cambio climático, conflictos violentos y desastres naturales, el crecimiento demográfico y la urbanización, así como la demanda de nuevas fuentes de energía como la bioenergía. La buena gestión pública de la tenencia de la tierra y su administración puede ayudar a reducir la pobreza y lograr el desarrollo económico. Por el contrario, una gestión pública deficiente tiene consecuencias negativas para la sociedad en su conjunto. Los pobres son especialmente vulnerables a los efectos de una gestión pública deficiente, ya que carecen de los recursos y la influencia necesarios para proteger sus derechos sobre la tierra. Una gestión pública deficiente fomenta la desigualdad entre hombres y mujeres, dado que las mujeres pobres suelen ser menos instruidas y disponer de menos recursos. Contribuye a la desigualdad social con consecuencias potencialmente desestabilizadoras, pues los ricos pueden aprovecharse de las oportunidades de apropiarse de las tierras mientras los pobres pierden sus derechos sobre las mismas y los bienes comunales, como las tierras de pastoreo y los bosques. Además, una gestión pública deficiente acarrea la degradación del medio ambiente, en la medida en que funcionarios corruptos se hacen cómplices de intereses privados, con dejación de sus funciones de control del uso de la tierra, la extracción de agua y minerales, así como la tala de bosques. El abuso y la degradación de las tierras públicas, incluidos los parques nacionales, es un resultado directo de una gestión pública deficiente. La evasión de impuestos sobre bienes reduce los ingresos públicos disponibles para servicios públicos como la sanidad y la educación. La aplicación arbitraria de la ley desalienta la inversión y obstaculiza el desarrollo económico.

El creciente reconocimiento de la importancia de abordar la cuestión de la ordenación de las tierras y los recursos naturales ha llevado a la Unidad de Gestión y Tenencia de la Tierra de la Organización de las Naciones Unidas para la Agricultura y la Alimentación (FAO) a centrarse en la buena gestión pública de la tenencia y administración de la tierra como una de las principales actividades de su actual programa de trabajo. Remediar una mala gestión pública requiere una disposición a superar las deficiencias y la oposición de quienes se benefician de la situación. Varios países de todo el mundo ya han reconocido la necesidad de mejorar su gestión pública y han empezado a introducir mejoras. La FAO lleva trabajando con el generoso apoyo del Gobierno de Finlandia desde 2005 en la sensibilización acerca de la importancia de esta cuestión y ha preparado directrices técnicas y otros materiales con varios asociados, entre ellos el Banco Mundial, Naciones Unidas-Hábitat, Transparencia Internacional y la Federación Internacional de Agrimensores.

Los artículos que figuran en este número complementan la reciente publicación *Buena gestión pública de la tenencia y administración de la tierra* (Estudio sobre tenencia de la tierra N.º 9), que da consejos prácticos a los profesionales del ámbito de la tierra sobre la mejora de la gestión pública en un sistema de administración de tierras u otros regímenes de tenencia de la tierra. Este volumen inicia con un artículo que contribuye al debate general sobre la tenencia de la tierra y la buena gestión pública. Los artículos

siguientes estudian cómo deberían considerarse las cuestiones relativas a la gestión pública de los proyectos de desarrollo en materia de la administración de la tierra y cómo afecta la gestión pública a la ordenación de las tierras demaniales. También presentan dos estudios de casos –uno sobre Georgia y otro sobre la reunificación de Alemania–, de los que se pueden extraer importantes lecciones.

**Paul Munro-Faure**

Jefe de la Unidad de Gestión y Tenencia de la Tierra  
División de Tierras y Aguas de la FAO

## **Bonne gouvernance dans l'administration foncière et régime foncier**

*Cet article présente le cadre, les principaux axes de réflexion et les conclusions du guide de la FAO intitulé Administration foncière et bonne gouvernance (FAO, 2007a). La terre est l'unique ressource dans la plupart des pays, mais les systèmes d'administration foncière sont souvent pénalisés par une gouvernance déficiente, qui a souvent des conséquences négatives pour l'ensemble de la société. En revanche, une bonne gouvernance peut favoriser le développement économique et réduire la pauvreté. Les administrateurs fonciers peuvent faire partie du problème général de la gouvernance ou être une partie de la solution. Leur rôle est capital. Mettre en place une bonne gouvernance dans l'administration foncière est un objectif difficile, mais réalisable.*

## **Buena gestión pública de la tenencia y administración de la tierra**

*En este artículo se presentan el marco, las principales ideas y las conclusiones de la guía de la FAO, recientemente publicada, sobre la Buena gestión pública de la tenencia y administración de la tierra (FAO, 2007a). La tierra es el mayor recurso de que disponen la mayoría de los países. Sin embargo, los sistemas de administración de la tierra fracasan con frecuencia debido a una gestión pública deficiente. Las deficiencias en la gestión pública tienen consecuencias negativas para la sociedad en su conjunto. Por el contrario, una buena gestión pública puede ayudar a lograr el desarrollo económico y a reducir la pobreza. Los administradores de la tierra pueden formar parte del problema general de la gestión pública, o pueden, y deberían, formar parte de la solución. Su papel es fundamental. No es fácil lograr una buena gestión pública de la tenencia y administración de la tierra, pero es posible.*



# Good governance in land administration and land tenure

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*This article presents the framework, key thinking and conclusions of the recently published FAO guide on Good governance in land tenure and administration (FAO, 2007a). Land is the single greatest resource in most countries. However, land administration systems often fail as a result of weak governance. Failings in governance have adverse consequences for society as a whole. In contrast, good governance can help to achieve economic development and reduce poverty. Land administrators may be part of the overall problem of governance, or they can, and should, be part of the solution. Their role is critical. Achieving good governance in land tenure and administration is not easy but it is attainable.*

## INTRODUCTION

Land is the single greatest resource in most countries. Access to land, security of tenure, and land management have significant implications for development. Land administration provides the infrastructure for an efficient economy. This means that it touches all aspects of how people earn a living. However, land administration systems often fail as a result of weak governance. Weak governance may mean that land is not used appropriately to create wealth for the benefit of society and, in particular, it leaves the poor in a weak position – marginalized and outside the law. Lack of competence in land administration can be an important constraint on development and the eradication of poverty. For example, a study produced by staff of the International Bank for Reconstruction and Development/World Bank (2006) describes how poor governance has a pernicious impact on the achievement of development: “In those countries where the problem is most entrenched, corruption undermines the driving forces behind reform. New firms are driven into the underground economy. Vital resources are siphoned off shore. Foreign investors

turn away in frustration. As a result, some countries risk being trapped in a vicious circle in which pervasive corruption reduces public revenues, undermines public trust, and weakens the credibility of the state, unless decisive leadership can push through the necessary reforms.”

Failings in governance have adverse consequences for society as a whole. In contrast, good governance can help to achieve economic development and reduce poverty.<sup>1</sup> Therefore, good governance matters. While much has been written about the importance of good governance in achieving development goals, there is comparatively little material on good governance in land tenure and administration. However, the governance of society’s greatest single resource cannot be ignored if development goals are to be achieved and if the population is to enjoy a tolerable quality of life.

Land administration may be part of the overall problem of governance. It may suffer from a lack of transparency and accountability as a result of confusing regulatory frameworks and complex

<sup>1</sup> There are some who argue that the relationship between governance and economic growth is not strong, e.g. Quibria (2006).

administrative processes. People who work in land administration may be exposed to the temptation of corruption (Burns and Dalrymple, 2006; Mwanza, 2005; van der Molen and Tuladhar, 2006). Land administrators have monopoly powers over certain tasks, and such powers can be abused.

Even where land administrators themselves behave relatively honestly, they might not take action to stop attacks by others on good governance. Land administrators may become aware of illegal activities by others, such as illegal logging or encroachment on forest reserves or state lands, while carrying out their normal jobs. Such activities will continue if land administrators do nothing about them. The message to land administrators is that they cannot pursue technical excellence in isolation. Their skills and techniques should serve the interests of society as a whole.

Land administrators can and should be part of the solution. Their technical skills can help tackle economic, social and environmental problems and right injustices. This is particularly the case where there are interlocking systems that relate to land. Land issues cut across society, and well-governed land administration can strengthen local institutions contributing broadly to governance. Land administrators act as guardians of the rights to land and of the people who hold those rights, in particular of those who tend to find themselves in a vulnerable position, e.g. women, children, ethnic or religious minorities, and internally displaced people and refugees. The poorest, who are usually the least educated and often illiterate, may face difficulties in understanding the processes, and they may lack the political connections and resources for hiring aid. The challenge for land administrators is whether to be part of the problem and benefit from the opportunities that corruption offers for private enrichment where governance is weak, or whether to be a strong force working towards good governance, economic development, and the reduction of poverty.

## **WHAT IS GOVERNANCE, AND WHEN IS IT GOOD?**

The ideas underlying governance in land administration are not new or alien although the term governance has not been traditionally part of land administrators' professional vocabulary. Land administrators have long had codes of professional ethics that recognize their duty of care to clients and society even though these codes have not explicitly addressed the process of governance. The issue is what is meant by good governance, and what good governance in land administration involves.

Governance is the process of governing. It is not the same as government but it is the process by which society is managed and the competing priorities and interests of different groups are reconciled. The notion of governance is captured in the following definition put forward by UN-Habitat (2002): "(Governance is) the exercise of political, economic and administrative authority in the management of a country's affairs at all levels. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences."

There are differences among those working to improve governance as to how governance should be defined. These differences have important practical policy implications for land tenure and administration. For some, authority and power in society are seen as being vested in many institutions and do not stem solely from governments. This definition of governance reflects the role of the private sector and civil society in decision-making alongside that of the government. For others, governance is more about how the state serves its citizens – how officials and public agencies acquire and exercise power and authority to determine public policy and provide public goods and services. These differences in definition are not mere matters of semantics. They lie at the heart of what type of policies should be pursued in order to achieve good governance in land

administration. They raise a core issue: should the policies aim to improve the work of the state or should they seek to influence how society as a whole manages land?

This paper argues that governance includes the formal institutions of government and also other arrangements for achieving these ends. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens, and how society obliges its members to observe its rules and laws. Rights and responsibilities over land are administered not only by the state but also by many private, communal and public bodies. Power and authority in land tenure does not only come as a result of state recognition through, for example, land registration, but also from customary and informal tenures. Civil society, including professional bodies, plays an important role in setting technical and behavioural standards. Accommodating conflicting interests and obtaining their cooperation for the common good is a major aspect of land administration in activities as diverse as urban and rural development, and the protection of the environment.

Under what circumstances can governance be regarded as “good”? The adjective good introduces a value judgement and an element of subjectivity into the debate. The outcome of good governance is clearly important. For example, UN-Habitat (2002) has argued that good governance should result in an impact on the welfare of the citizenry so that no individuals can be denied access to the necessities of life, such as adequate shelter, security of tenure, safe water, sanitation, a clean environment, health, education and nutrition, employment, and public safety and mobility. Also important are the processes for achieving good governance. One study (Kaufmann, Kraay and Mastruzzi, 2006) identified six groups of indicators of the process of governance:

- voice and accountability, showing the extent to which citizens are able to determine how their government is selected;

- political stability and the absence of violence;
- government effectiveness;
- regulatory quality;
- the rule of law;
- the control of corruption.

The quality of governance is measured according to how well a country performs in each of these areas.

What is clear is that there is more to good governance than merely the avoidance of corruption. There is consensus that the features of good governance include accountability, political stability, the effectiveness of government, regulatory quality, and the rule of law, as well as control of corruption. Good governance means that government is well managed, inclusive, and results in desirable outcomes. The principles of good governance can be made operational through equity, efficiency, transparency and accountability, sustainability, subsidiarity, civic engagement, and security. Governance can be poor where government is incorruptible but tyrannical, or where it is democratic but incompetent and ineffective.

### **GOOD GOVERNANCE, HUMAN RIGHTS, AND PROFESSIONAL ETHICS**

Ideas on good governance can be derived from human rights and fundamental freedoms. However, there may not be overall consensus on the extent to which the principles of good governance can be regarded as human rights enforceable in international law (Jokinen, 2002). Certain aspects of good governance are embedded in international human rights law and this particularly applies to property rights. For example, Article 17 of The Universal Declaration of Human Rights<sup>2</sup> states that: “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”

The American Convention on Human Rights<sup>3</sup>, the European Convention for

<sup>2</sup> <http://www.un.org/Overview/rights.html>

<sup>3</sup> <http://www.cidh.oas.org/Basicos/basic3.htm>

the Protection of Human Rights and Fundamental Freedoms<sup>4</sup>, and the African Charter on Human and People's Rights<sup>5</sup> contain similar protections. They have resulted in case law that helps to clarify the relationship between human rights and the rights to land in areas such as unfair taxation, the deprivation of ownership rights, land registration, land-use planning, and restitution. For land tenure and administration, it is feasible to define some aspects of good governance in terms of legally-enforceable human rights although enforcement of other aspects of governance may be more problematic.

An alternative approach to governance can be derived from professional ethics concerning the relationship between professionals and their clients as put forward by bodies such as the International Federation of Surveyors (FIG, 1998) and the International Valuation Standards Committee (2003). Professionals owe a duty of care to their clients and should not exploit their relationship for their personal advantage to the detriment of their clients, for example, by exploiting their access to confidential data. The main themes incorporated in the codes are competence, integrity, confidentiality, transparency and accountability. Codes of professional ethics often argue that there are also obligations to society as a whole as well as to specific clients.

The principles incorporated in codes of professional ethics have been used to create systems of corporate governance in the private sector (MacMurray, 2006). These have been used to develop similar systems for the public sector (FAO, 2007b; Audit Commission, 2006). The principles are designed to influence the behaviour of individuals. They stem from recognition that the person who is best placed to steal from the owner or to misuse power is the person who has been placed in a position of trust, irrespective of whether that person works for an individual client, a company

or the government. There is no fundamental difference in the duty of care and its ethical basis between a person who works for a commercial property company and one who works for a state land registry or cadastre. The principles add two important dimensions to good governance. First, they are opposed to petty corruption, such as the payment of bribes for the provision of routine services. Second, professional integrity implies that a land administrator should not be a silent witness, a willing partner, or a facilitator of grand corruption where the state has been "captured" by a powerful group. The principles are important to good governance because they add the notion of personal responsibility by individual land administrators.

### MEASURING GOOD GOVERNANCE

Good governance is not an absolute condition. Rather, there is a continuum between weak and good governance. This implies that it should be possible to devise ways to measure the governance of a country and to compare it with other countries or with itself over time. Benchmarking, using key indicators, can play an important role in improving performance as it can identify those areas in which a country is weak compared with others. In turn, this can help in prioritizing policies and resources in the search for improvements in governance.

Governance indices are generally compiled by taking a series of indicators and weighting their scores so as to produce an aggregate measure. Well-chosen indicators should identify causality so that a change in the indicator is related to a change in the quality of governance. Tests are usually made to check how an indicator varies compared with the index as a whole. There are a large number of potential indicators of different aspects of governance, such as corruption, elections, the functioning of the judicial system, and freedom of the press. Criteria for selecting indicators include ease of collection, universality, relevance and credibility. Additional indicators can be used to shed light on special

<sup>4</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

<sup>5</sup> <http://www.hrcr.org/docs/Banjul/afrhr.html>

group concerns, such as gender equality. Deviations from a base can be used instead of absolute numbers, particularly where the measure uses nominal, ordinal or interval data rather than ratio data. Indicators can be quantitative, such as voter turnout, or qualitative, such as perceptions of corruption. There are invariably issues that arise from the choice of specific indicators as some can be ambiguous. The problem is that the indicators tend to be proxies for a principle of good governance, such as accountability or inclusiveness. At times, a proxy may give misleading indications.

Most governance indicators are not specific to land administration and land tenure. A rare example is the Real Estate Transparency Index, produced by the international real estate adviser and broker Jones Lang LaSalle (2006). This emphasizes issues such as the quality of investment performance indices and fundamental market data, the disclosure and governance of listed investment vehicles, regulatory and legal factors with respect to private property rights, and professional and ethical standards.

Most governance indices concern governance in general although they may contain material relevant to land administration and land tenure. In a study for the World Bank, Kaufmann, Kraay and Mastruzzi (2006) use indicators that include government effectiveness and regulatory quality, which are of relevance to land administration, and the effectiveness with which corruption is controlled and the degree of confidence in the rule of law, which have important implications for land tenure as well as land administration. The World Bank's Doing Business Index (World Bank / International Finance Corporation, 2006) examines whether public goods are provided efficiently and whether there is a favourable climate for business. Two of the ten indicators used of the ease of doing business within a country are specifically concerned with real estate. Dealing with licences examines the procedures required for a business in the construction industry to build a warehouse on a greenfield site,

including town planning and building control permits, and to have services connected. Registering property examines what is involved in a business purchasing land and a building and in transferring title from seller to buyer in a peri-urban area of the country's most populous city. The Urban Governance Index (UN-Habitat, 2004) was developed as a tool to help galvanize local action on governance so that towns and cities can benchmark their performance. It includes the publication of budgets, tenders and accounts, and independent audits as a measure of accountability, and tax collection and local revenues as measures of effectiveness. Real estate taxes play an important part in local government revenues. The Bertelsmann Transformation Index (Bertelsmann Stiftung, 2005a, 2005b) examines countries undergoing transformation. The index has two elements: the Status Index, which examines democracy and the extent to which there is a market economy; and the Management Index, which examines governance in the sense of how far a country has adopted democracy and the rule of law, the efficiency of its economy and market infrastructure, and how well the country is managed. The latter includes the protection of private property. Transparency International produces data on corruption rather than on governance in general. In its Corruption Perception Index (Transparency International, 2005), land administration is not identified as a separate element although registry and permit services and taxation are. Transparency International is organized by national chapters, and some of these produce data that provide an insight into corruption in land administration (e.g. Transparency International Kenya, 2006).

Indices of governance will incorporate implicit assumptions as to how good governance should be defined. They are liable to misclassifications when ratings are broken down into a fine scale rather than broad generalizations, and they are subject to a margin of error (Levy, 2007). However, they play a useful role in raising awareness of governance issues and can help identify

TABLE 1

**Characteristics of good governance**

Good governance is:	Weak governance is:
1 Efficient, effective, and competent: Formulates policy and implements it efficiently by delivering services of a high quality.	Inefficient, ineffective and incompetent: Fails to formulate policy effectively or to deliver efficiently services of adequate quality.
2 Responsive: Delivers the services that citizens want and need.	Unresponsive: Does not deliver the services that citizens want and need.
3 Legitimate: Those in power have earned the right to govern, have been endorsed by society through democratic processes, and can be replaced if the citizens are dissatisfied with them.	Illegitimate: Those in power have not been endorsed by society nor earned the right to govern, but have achieved power undemocratically and the citizens are unable to remove them from power.
4 Transparent: Open.	Opaque: Secretive.
5 Consistent, predictable and impartial: Outcomes from the governance processes are predictable and in accordance with published laws, rules and regulations. There is legal redress and enforcement of law by an impartial judiciary in the event of inconsistency.	Inconsistent, unpredictable and partial: Outcomes from the governance processes are unpredictable, do not follow discernable rules, and there is no redress from a judiciary, which behaves with partiality.
6 Accountable: Demonstrates stewardship by responding to questioning, explaining its actions, and providing evidence of how it functions.	Unaccountable: Does not account for its actions, and fails to produce evidence of its performance. There are no effective checks and balances to compel accountability.
7 Equitable: Deals fairly and impartially with individuals and groups providing non-discriminatory access to records and services.	Inequitable: Unfair and partial in dealings, favouring particular groups with access to power and discriminating against others, e.g. by gender, ethnicity or religion.
8 Sustainable: Balances the economic, social and environmental needs of present and future generations.	Unsustainable: Fails to balance the needs of future and present generations.
9 Locally responsive: Locates service provision at the closest level to citizens consistent with efficient and cost-effective delivery.	Locally unresponsive: Pays no regard to the convenience of citizens when locating services.
10 Participatory: Enables citizens to participate fully in governance through consensus building and engages with civil society without curbs on the media or on freedom of expression and association.	Exclusive: Excludes citizens from participation in governance with curbs on the media and on expression and association.
11 Provides security and stability: Provides security of livelihoods, freedom from crime and from intolerance, security from human conflicts and natural disasters, and security of tenure.	Unwilling or unable to provide security and stability: Citizens cannot look to the government for security, which may even be the source of their insecurity.
12 Integrity: Officials perform their duties diligently and objectively without seeking bribes, and give independent advice and judgements, and the government respects confidentiality. There is a clear separation between the private interests of officials and politicians and the affairs of government.	Corruption: Officials are bribed to do what citizens have a right to expect. They distort decisions in favour of those who reward them, and make use of confidential information for their own gain. Officials and politicians treat government as a vehicle with which to pursue their own private interests.

areas in which individual countries could focus their reform efforts.

### DESCRIBING GOOD GOVERNANCE FOR LAND ADMINISTRATION AND LAND TENURE

Table 1 presents the characteristics of good governance derived from the literature on governance and its measurement. From this, one can draw out features of good governance in land tenure and administration, and derive policies that can promote good governance.

However, what do these ideas on good governance mean for land tenure and administration? Differences in emphasis about what good governance is have significant policy implications. A land administration system that is designed to enhance a pro-poor and gender-sensitive agenda is likely to place a high priority on areas such as achieving security of

tenure for lessees and sharecroppers, the recognition of informal and customary property rights, and the development of gender-neutral inheritance rights. A land administration system designed to promote commercial development is likely to place the priority on areas such as the speed of re-registration after sale, the speed and accuracy of searches to check for charges against properties for loan purposes, the clarity of regulations for planning and building, and the procedures for changing land use. This does not mean that a choice has to be made between eliminating corruption and improving the responsiveness and efficiency of services, or between benefiting the poor and promoting commercial development. A land administration system can be designed to serve different sectors of society. However, land administration that serves exclusively

TABLE 2

**Examples of embodying good governance values**

Good governance values in land tenure and administration	Examples of practice embodying good governance values	Relationship to Table 1
Land administration systems should be efficient, effective and competent.	Work is accurate and timely, with enquiries answered within a reasonable period. Work is undertaken by competent persons. Good performance is rewarded. Lazy or ineffective professionals are disciplined or dismissed.	1
Land policies that embody value judgements should be endorsed by elected politicians after consultation with interested and affected parties.	Land-use plans are approved by democratically elected politicians after effective public consultation.	2, 3, 10
Land information is freely available, subject to the protection of privacy.	Land register information can be freely accessed (subject to privacy constraints). Prices paid for properties are available from the land registry. Land tax assessments can be inspected so that taxpayers can challenge the fairness of assessments. Decisions on changes to land use are made in meetings that are open to the public, and citizens can make representations to the decision-makers.	4
Land laws and regulations should be freely available, well drafted, responsive and consistent, and able to be enforced by the government and citizens.	Citizens can bring land disputes before an independent and impartial judiciary that is supported, as appropriate, by technical experts. Laws are clear and consistent and translated into local languages. Alternative dispute resolution processes are available so that disputes can be settled by mediation and conciliation as an alternative to court actions. The decisions of the government in areas such as land-use planning, land taxation, and compulsory purchases can be challenged by citizens in the courts on points of law. Valuations used by the government in areas such as taxation and compulsory purchase can be challenged by citizens.	5
Land administration services should be independently audited, and should publish their accounts and performance indicators.	Land registration systems publish their accounts and key performance indicators, which are independently audited. Government accounts are kept on an accruals basis. Professional bodies separate their promotional and disciplinary activities.	6
Land administration services should be provided for all without discrimination, for example, on the basis of gender, ethnicity, religion, age, or political affiliation.	Inheritance laws do not discriminate by gender. Information is accessible for all, including illiterate population. The land rights of minorities are protected by land registration. Indigenous rights on land are recognized. The cost of land registration is affordable. Services do not require expensive external support (i.e. lawyers).	7
Sustainable land development should be encouraged.	Regulations to prevent unsustainable development are enforced.	8
Land services should be provided close to the user.	Land records can be accessed remotely using computer technology. Service points are accessible for remote settlements.	9
Land registration and legal systems should provide security of tenure for those with a legitimate interest in a land parcel.	Registered rights of people are legally protected against claims of others. Records can be altered only by authorized officials. Backup systems for land registration allow records to be recreated if destroyed by natural disasters or conflicts.	11
Land administration officials should behave with integrity and give independent advice based on their best professional judgement.	Policies exist to prevent and identify corrupt practices, insider trading and favouritism, and to discipline or prosecute those behaving in such ways. Policies protect "whistleblowers". Officials and politicians are required to disclose potential conflicts of interest and not to act in such cases. Government property is accounted for.	12

a limited purpose makes an equally limited contribution to overall development. It does mean that different countries may pursue different approaches to good governance in land administration because they have different priorities and values.

Achieving good governance in land administration requires a broad commitment by the people involved. A well-communicated land policy with clear objectives for legal and institutional reforms helps to establish wider ownership in the

change process by those working in land administration. Table 2 presents some examples as to how good governance values can be embodied in land administration.

#### **WHY GOVERNANCE IN LAND ADMINISTRATION AND LAND TENURE MATTERS**

Weak governance tends to flourish where the law is complex, inconsistent or obsolete. Fragmented institutional arrangements, weak institutions, ambiguous laws, and a weak judiciary create problems. Often, at

the heart of the problem is poor motivation, low pay and poor training rather than corrupt officials. Rather than being allocated on merit, jobs may be reserved for a particular ethnic or religious group, or those who support a political party or a favoured gender. Sometimes, low pay means that officials give priority to other sources of income. Land agencies are particularly vulnerable to weak governance when they are being restored after destruction caused by a violent conflict or emergency. Bad practices have the potential to spread quickly.

Weak governance is often associated with two principal types of corruption: “state capture” and “administrative corruption”, each with its own characteristic set of behaviours (World Bank, 2000):

- State capture is corruption on a grand scale. It transfers economic resources inappropriately from the state to private interests. The state can be “captured” by individuals, families, clans, groups, or commercial companies. Those who capture the state are able to direct government policy for their own benefit, which can include the passing of laws and regulations, civil and criminal court decisions, favourable tax and customs treatment, and the corrupt mishandling of funds.
- Administrative corruption is about the abuse of office by individual officials who use their power for self-enrichment rather than to execute the tasks for which they were appointed. Officials in a regime of administrative corruption seek bribes to evade controls, to speed-up administrative procedures, and to produce results that favour the bribers. Chaotic administration and unclear procedures help officials secure bribes. Administrative corruption is often downplayed as insignificant gift giving, such as “tea money” or “drinks”, but the truth is different. Gift giving is not insignificant. It makes land administration exclusive. Gifts are not a gesture of friendship but a price of service and mostly unaffordable for the weakest. Frauds are a common feature of administrative

corruption, such as false claims, invoices and valuations. Officials may also engage in extortion, requiring individuals and commercial companies to make payments in order to avoid being harassed.

The consequences of weak governance can be summarized as follows:

- Poverty and social exclusion. Weak governance hits the poor particularly badly as they lack the resources to pay the bribes to obtain services and they cannot afford legal protection, particularly to defend their rights to land.
- Constraints on economic development. Weak governance and corruption restrict development by increasing business risks, reducing incentives for investment, saving and entrepreneurship, and distorting incentives.
- Environmental degradation. People may pay corrupt officials to be exempt from controls on building or land-use planning, and over the extraction of water or minerals. Informal payments or political influence may prevent the enforcement of regulations designed to protect the environment.
- Reduced public revenues. People may evade taxes by making informal payments. Valuations of properties for tax purposes may be understated deliberately in order to lower the tax burden.
- Tenure insecurity. Illegal transfers may cause legitimate owners or occupiers to lose their rights. Informal transfers and informal ownership of properties are not protected by law, and the protection by customary tenures may not be all-inclusive, for example of newcomers. Those who capture the state may use land registration systems to reinforce their claims to land, even when the land has been acquired through “land grabbing”.
- Weak governance leads to disputes. It provides opportunities for the powerful to claim the land of others, including the state.



- Weak land and credit markets. Weak governance may encourage people to seek a higher loan-to-value ratio on land parcels offered as collateral than would be prudent for banks to grant, or a larger loan than the borrower's income would justify. Informal payments may allow people to obtain fraudulently excessive valuations of the collateral or make false statements of income, which increase the vulnerability of the banking system.
- Negative social behaviour. Corrupt behaviour has a corrosive effect on ethics and social behaviour. Observing others behaving corruptly can reduce the sense of social obligation and the willingness to conform to laws.
- Abuse of compulsory purchase. Weak governance may prevent people from receiving fair compensation. Compensation might not be paid, or it may be paid at a falsely lower or higher value, and may not reach all those who suffer losses. Compulsory purchase may be a powerful tool for self-enrichment where corruption flourishes.

### **IMPROVING GOVERNANCE IN LAND TENURE AND ADMINISTRATION**

The methods of improving governance in land tenure and administration are rarely unique to it, and experience elsewhere can help to develop good practice. Public agencies and private companies face the same problem of ensuring that their employees do not pursue their own self-interests at the expense of the public or their stakeholders. Many of the methods used in private companies have been found to work in the public sector. The measures put forward in this article work where there is reasonable quality of governance and respect for its principles. They are likely to work best in a society in which progress is being made to improve the governance of society as a whole. In many countries, the standard of governance is so low that it is difficult to see how improvements in the governance of land tenure and administration can be made

without fundamental changes in the system of government. If the government is not committed to democracy, the rule of law and human rights, improvements in the governance of land tenure and administration will be difficult to achieve. However, working to achieve higher standards of land administration can be one of the ways in which a dysfunctional society improves its governance. Ways to improve governance are:

- Set service standards. Weak governance thrives where there are unclear service standards, such as the time that a procedure should take and what it should produce. Without enforceable service standards, inefficiency can develop unchecked, which in turn creates opportunities for bribery, corruption and favouritism. The introduction of service standards is an important part of shifting the focus from the producer to the customer. Standards have little credibility if they are not monitored and if they and the results of the monitoring are not made public.
- Improve systems and processes. The achievement of standards requires planning and implementation. The processes for which standards are required should be identified. Chaotic and unclear processes provide an environment in which bad practices can flourish and avoid detection. Simplification of processes reduces costs, improves efficiency and improves governance by reducing the opportunities for corruption.
- Build capacity. Good governance in land administration is effective, competent and sensitive. It cannot be found where there is insufficient capacity to deliver the services. Capacity building requires adequate investment in human resources through training and staff development, and in technical resources, including buildings and equipment.
- Secure finances. Capacity building requires stable finances. Money is

needed for the physical environment, staff development, and day-to-day operating expenses. Staff morale is crucial and requires that staff be paid on time and at a rate of pay that reflects the market wage. Land administration can be financed in different ways, including from state budgets, public-private partnerships, and from fees paid by users.

- Develop a human resources policy. Good governance is not achievable unless services are delivered by people who have the right skills and attitudes and are motivated to achieve it. This requires a human resources policy that embraces all aspects of employing people, including recruitment, remuneration and employee benefits, training and personal development, career progression, and disciplining those who break the rules. A key principle is that of equal opportunities.
- Establish independent auditing. Independent auditing aims to provide transparency in accounting and includes testing the systems of financial management and control, and not merely the checking of accounts. Genuinely independent auditing of the public sector requires an ability to report problems to an appropriate body with the power to take action over abuses uncovered. Auditors can also audit service standards and the systems for monitoring these
- Make effective use of information technology and communications (ITC). ITC has the potential to improve the governance of land administration by improving efficiency, consistency, accountability, transparency and accessibility. Productivity increases arise as large numbers of transactions can be carried out at lower costs. The computerization of land records means that files can no longer be the “personal” property of corrupt officials but leave audit trails.
- Support professional organizations. Professional organizations working

in land administration can provide a code of ethics for their members. Governments may decide only to employ land administrators who are members of appropriate professional bodies. This means dismissing officials who are expelled from their professional body for technical incompetence or breaching the code of behaviour.

- Strengthen customary institutions. Formal land administration is irrelevant to vast numbers of people in the world who live in informal urban settlements or where not-recognized-by-law customary tenure prevails in rural areas. Good governance in land tenure also means achieving this in informal tenures. While the rules of formal and customary tenure may differ significantly, the concept of good governance is similar, that is, the tenure institutions should be efficient, effective, competent, responsive, transparent, accountable, equitable and predictable. Customary institutions should be strengthened to improve their internal administration of land and interactions with others.

## CONCLUSIONS

Governance is the process and manner of government recognizing that authority and power in society is vested in many institutions and not only in itself. Weak governance in land administration has adverse consequences for society as a whole. Good governance in land administration helps economic development and reduces poverty.

Reversing weak governance is a long-term, never-ending process rather than a short-term project. Good governance requires a willingness to overcome existing weaknesses and the opposition from people who wish to maintain the benefits they receive from corrupt activities. Good governance also requires developing the capacity that is needed in order to make change possible. Achieving good governance in land tenure and administration is not easy but it is attainable and, given the potential impact on

the social status of the poor and for economic growth, it is certainly worth trying for.

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## **Bonne gouvernance dans les projets d'administration foncière: préparation et mise en place des projets et renforcement des capacités**

*L'administration foncière est très souvent pénalisée par une gouvernance déficiente et son corollaire le plus grave: la corruption, qu'elle soit bureaucratique et/ou politique. Cette question délicate se pose à toutes les étapes des projets d'administration foncière. Pour la résoudre, les nouveaux projets doivent incorporer des mesures de bonne gouvernance dès la phase de préparation et, dans l'idéal, des discussions doivent être entamées entre le gouvernement, le secteur privé et la société civile pour fixer les objectifs en matière de gouvernance et inclure des mesures anti-corruption dans le cadre du projet. Il faut par ailleurs éviter de ne s'intéresser qu'aux aspects techniques. Les projets en cours doivent inclure progressivement des mesures favorisant la bonne gouvernance dans l'administration foncière.*

*Cet article présente un certain nombre de mesures qui peuvent être appliquées pendant la préparation et la mise en œuvre des projets. Cependant, pour que les mesures proposées ou introduites par un projet puissent avoir un effet durable, le personnel des institutions chargées de l'administration foncière d'un pays doit être formé aux questions de gouvernance, quel que soit le niveau administratif considéré. Il faut donc élaborer de nouveaux programmes de formation et modifier les programmes des divers enseignements existants, mais également mettre en place une nouvelle approche en matière de renforcement de capacités, axée sur l'actualisation et le perfectionnement des connaissances et des compétences en matière de bonne gouvernance.*

## **Buena gestión pública de los proyectos de administración de la tierra: preparación y ejecución de los proyectos, y fortalecimiento de la capacidad**

*Dada la existencia generalizada de una gestión pública deficiente de la administración de la tierra y sus efectos potencialmente graves, la cuestión de la corrupción, tanto a nivel burocrático como político, debería abordarse en los proyectos de administración de tierras. Ello puede hacerse en cualquier etapa. Los nuevos proyectos deberían incorporar medidas de buena gestión pública en la fase de preparación y, de ser posible, deberían entablarse conversaciones entre la administración, el sector privado y la sociedad civil para ponerse de acuerdo sobre los objetivos de la gestión pública a fin de que incluyan medidas contra la corrupción al diseñar el proyecto. Deberían evitarse los enfoques centrados únicamente en los aspectos técnicos. Los proyectos en curso pueden introducir gradualmente medidas para promover la buena gestión pública de la administración de la tierra.*

*En este artículo se presenta una serie de medidas que se pueden aplicar durante la preparación y la ejecución del proyecto. Sin embargo, para que las medidas propuestas o introducidas por el proyecto tengan un impacto a largo plazo, debería formarse a las personas que trabajan en todas las instituciones del país relacionadas con la tierra en las cuestiones referentes a la gestión pública. Ello requiere no sólo nuevos programas de formación y cambios en los planes de estudio actuales de educación y formación, sino también un nuevo planteamiento del fortalecimiento de la capacidad que, además de centrarse en unos conocimientos teóricos y prácticos adecuados y actualizados, abarque las actitudes.*

# Good governance in land administration projects: project preparation, project implementation, and capacity building

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*Given the widespread existence of weak governance in land administration and its potentially serious impacts, corruption – at both the bureaucratic and political levels – should be addressed by land administration projects. This can be done at any stage. New projects should incorporate good governance measures at the preparation phase and, ideally, discussions should be initiated among government, the private sector and civil society to agree on governance objectives and to include anticorruption measures in the project design. Approaches that focus entirely on technical aspects should be avoided. Ongoing projects can gradually introduce measures to promote good governance in land administration.*

*This article presents a number of measures that can be applied during project preparation and implementation. However, if the measures proposed or introduced by a project are to have a long-term impact, individuals in all land-related institutions in the country should be trained in governance-related matters. This requires not only new training programmes and changes to the curricula of existing education and training provision, but also a new approach to capacity building that extends its focus on updated and adequate knowledge and skills to encompass attitudes.*

## **INTRODUCTION: STATUS QUO AND RESULTING NEEDS FOR PROJECT WORK**

Land administration in developing countries is often characterized by weak governance. Apart from generally weak public-sector management, land administration is often marked by bureaucratic and political corruption. In many developing countries, land registration agencies are considered to be among the most corrupt and inefficient government agencies.

Petty or bureaucratic corruption in land administration is related mainly to land registration, surveying and property valuation. It includes all kinds of informal payments to obtain or speed up service, to receive a service that has already been paid for, to avoid inspections of a property, or to pay for illegal services (e.g. registration of fraudulent titles or the undervaluation of property to save taxes). Non-transparency –

planned or by accident – often favours petty corruption (Box 1).

Grand or political corruption (state capture) concerns mainly state land management. It includes activities such as the illegal sale and lease of state land by public officials, as well as transfers of state property to political elites. Such corruption may affect other aspects of governance, for example the impartiality of courts dealing with land conflicts and litigation.

Petty and grand corruption lead to a number of negative impacts, such as:

- insecurity of tenure;
- high transaction costs;
- informal land transactions, creating an informal property market;
- reduced private-sector investment;
- land grabbing and illegal transfers of state land;
- limited local revenues (tax);

## BOX 1

### The art of non-transparency: land related fees in the Lao People's Democratic Republic

The Lao People's Democratic Republic is doing well in privatizing land and securing property for individuals – for men as well as women. Land rights are comparatively secure, and urban as well as rural citizens can trade in land and mortgage their land. However, when they want to (or have to) register their land to sell or mortgage it, they have to make enormous illegal payments. Lao land administration is a typical example of non-transparency concerning land-related fees – maximizing opportunities for corruption. Fees related to land measuring, surveying and registration are regulated in no fewer than six decrees, notifications, ministerial directions, etc. In October 2006, new notary fees entered into force that give a good example of the clear and fair, however confusing, fee structure:

Value declared in the contract	Service fee per set of documents (KN)	Service fee per page
Up to 1 000 000	10 000	1 000
From 1 000 000 to less than 100 000 000:	10 000 + 0.1% of the amount exceeding 1 000 000	1 000
From 100 000 000 up to less than 1 000 000 000:	110 000 + 0.05% of the amount exceeding 100 000 000	1 000
From 1 000 000 000 and over:	610 000 + 0.02% of the amount exceeding 1 000 000 000	1 000

Note: KN10 000 = US\$1.

These fees can definitely not be calculated with the ordinary calculator available in the notary offices in the Lao People's Democratic Republic. Even if notaries manage to calculate the fees (which is doubtful), most of the clients will have problems in verifying that the amount to pay is correct. The situation is similar in land registration offices – fees are not posted up anywhere; only one poster includes another calculation (it shows how to calculate registration fees). However, nowhere can you receive an overview on clear and simple fees – in whatever form. The law includes a huge number of different cases for registration fees (at least 30). To deal with land issues in the Lao People's Democratic Republic, you have to be a good mathematician. Customers even stated in a client survey that the only reason they had to come back for was that their fees still had to be calculated. Others simply assumed that the real reason was that they did not pay enough speed-up money, such as the tuk-tuk driver who had already been to the Land Office in Vientiane 18 times for the simple purpose of transferring property.

Another example is the land registration fees, which actually are rather more like a land transfer tax. Again, they are not easy to determine: 0.5–4 percent of either the full land value before titling (and valuation), or based on 30–35 percent of the land value after titling. The rule takes into consideration the fact that people normally cheat on values as long as there is no valuation (which in the Lao People's Democratic Republic comes with the titling). However, even in remote rural areas, officers do evaluate the land in case of registration (which people therefore generally avoid).

To sum up, current transaction costs in the Lao People's Democratic Republic are high and hinder the development of a formal land market as too many transactions are done informally in order to avoid transaction costs, which can easily lead to tenure insecurity in the future.

Sources: Wehrmann, Soulivanh and Onmanivong (2006); Wehrmann, Souphida and Sithipanhya (2007).

- different sorts of land conflicts;
- landlessness and inequitable land distribution;
- social instability, social exclusion and political instability;
- erosion of ethics and standards of behaviour;
- unsustainable natural resources management.

Given the wide existence of weak governance in land administration and the immense negative impact of it, land administration projects should address both corruption in land administration as well as state capture. This can be done at any time. New projects should already include good governance measures in the project preparation phase, and, ideally, initiate discussions among government, private sector and civil society to agree on governance objectives and to include anticorruption measures in the project design – entirely technical approaches should definitely be avoided. In the case of donor assistance in land administration projects, identifying and addressing issues of governance should be widely adopted. In some countries, a governance assessment might even be recommended in order to avoid project failure. Ongoing projects can step-wise include measures to promote good governance in land administration and finally to address crucial issues such as:

- transparency,
- accountability,
- efficiency,
- effectiveness,
- equity,
- fairness,
- predictability,
- de-politicization,
- public participation,
- legal security,
- rule of law.

A monitoring framework can be set up at any time. In some regions, such as in the Central and Eastern European Countries (CEEC), benchmarking could even be an incentive for governments to fight corruption in land administration and to demonstrate their achievements.

This article gives an overview on activities that are currently applied in different donor-supported projects – mainly in Asia and the CEEC – to improve good governance in land administration. To increase the effect of project measures, a broad range of capacity building on this issue is needed in almost all developing countries. Therefore, the article includes training needs and recommendations for capacity building concerning good governance in land administration as discussed at an expert group meeting in January 2007 in Nairobi jointly organized by International Institute for Geo-Information Science and Earth Observation (ITC) and the United Nations Human Settlements Programme (UN-HABITAT).

### **GOOD GOVERNANCE IN LAND ADMINISTRATION DURING PROJECT PREPARATION**

As most – if not all – land administration projects have to face either petty or grand corruption or both, the recommendation is to include good governance issues in the project design and to conduct a governance assessment where possible during project preparation, otherwise directly after the beginning of the project at the latest.

#### **Governance assessment**

The governance assessment or the identification of the status quo should include:

- an institutional analysis on administrative weaknesses;
- a customer and landowner survey on petty corruption;
- an analysis on state land management in order to identify grand corruption;
- a policy analysis on ongoing national activities to strengthen good governance in other sectors.

Corruption is a hot and unpleasant issue, so the question remains as to whether it should be addressed already during project preparation or whether it needs more confidence among the partners. The advantages of including a “governance check” in the preparation phase are that:

## BOX 2

### Governance overview note for a land administration project in Albania

During the pre-appraisal mission for a new land administration and management project in Albania, with financial support from the World Bank, a governance overview note (World Bank, 2006) had to be prepared to assess governance issues in land administration and land management.

The World Bank's 2006 country assistance strategy aims to support Albania's efforts in improving governance. It recognizes that more coherent efforts need to be made to address the challenge of poor governance. Therefore, it introduces a "governance filter" consisting of four core principles to be used to ensure that governance considerations are mainstreamed into all of the activities supported by the World Bank:

- Seek greater transparency in the use of public resources.
- Support increased autonomy and de-politicization of key public-sector counterpart organizations.
- Analyse the formal (and probable future) roles of local governments, and develop capacity – and local mechanism of accountability – to enable local governments to take these roles effectively.
- Strengthen mechanisms for advocacy and increased involvement of citizens (including non-governmental stakeholders) to encourage improved performance of public service delivery and policy-making bodies.

The governance overview note integrates these four principles (or the "governance filter") into the land administration project design. It consists of three parts:

- Summary of ongoing governance reforms in Albania concerning land management and urban development.
- Assessment of the institutional and governance perspective of the responsible national institution and municipalities (system and weaknesses).
- Measures and indicators: Based on the institutional analysis, specific measures addressing governance issues were identified and included in all components of the project.

- awareness can be raised right from the outset;
- good governance can be made a project objective;
- a baseline study for future monitoring could be prepared;
- lacking political will to address weak governance – especially state capture – could become a reason not to start a project at all.

However, it should avoid becoming just another feasibility study that increases workload during project preparation without entering seriously into the project design.

An example where a governance assessment was included in the project preparation is the land administration and management project in Albania supported by the World Bank, where a "governance overview note" was prepared in 2006 (Box 2) that led to specific measures addressing governance issues in each project component.

A governance assessment can be done in different ways. It can include a more formal approach or be based on rather informal interviews. How it should be conducted depends entirely on the specific situation. However, it should include certain key questions for analysis and evaluation (Zakout, Wehrmann and Törhönen, 2006):

- How many days/weeks/years does it take to register a property?
- How many steps are needed to register a property?
- How many informal payments have to be paid for land registration?
- Are the registered rights protected under the law?
- Are there clear and appropriate service standards?
- Are these service standards easily accessible for the public? Are they known by the clients?
- Is the application of these service standards monitored regularly?



- Are there complaints mechanisms for people not satisfied with land registration (e.g. hotline, customers' survey, and complaints box)?
- Is information on properties and land ownership available to the public?
- Do the land records cover all social groups and all geographical areas, or are certain groups or areas marginalized?
- Is there a state land inventory, and is it available to the public?
- Are there clear, fair and transparent rules for state land management (including regulations for leases, concessions, etc.), and are they applied consistently?
- Does the government have clear, transparent and well-functioning procedures of dispossession of state land, including mechanisms for control and sanctions?
- Are there public displays in case of boundary delimitation, adjudication or systematic registration?
- Is there any evidence of corruption in court decisions with respect to land disputes? If so, what is the government doing about it?
- Is there any evidence of corruption in customary land administration? If so, what is the government doing about it?
- Is there any evidence that poor people are deprived of their property rights owing to weak governance in land administration?
- Is there any evidence that legitimated landowners are deprived of their property rights owing to their customary origin (vague boundaries, oral proof only, etc.)?

### **Governance indicators**

The discussion is still ongoing as to whether key questions are adequate to follow up on governance issues concerning land administration or whether indicators should be used instead or in addition. Indicators provide the opportunity to measure changes and to compare between different times and different places. However, there might be in-

country resistance from those parties who fear an increase in transparency. Another fear – this time rather from the side of social scientists – is that indicators often do not reflect the real situation but distort it. If indicators are considered, they should be simple, developed in cooperation with the key stakeholders, and limited in number – catching the key issues without distorting reality.

Indicators are definitely useful for monitoring and benchmarking. At international level, consideration should be given to developing about ten key indicators that could be used for country comparison. The same indicators – maybe including some additional country-specific ones – could also be used for baseline studies and monitoring of progress in land-related governance within a given country. A broad discussion should be held as to whether land-related governance indicators should be institutionalized in the form of an annual ranking – similar to the Doing Business indicators published by the World Bank.

Possible indicators could be:

- Days taken to register a property.
- Number of steps needed to register a property.
- Amount of informal payment that has to be paid for land registration (could be measured as a percentage of total registration costs or of property value).
- Clarity, appropriateness and accessibility of service standards (on a scale of 1–10).
- Availability of information on properties and landownership for the public (on a scale of 1–10).
- Inclusiveness of land records (on a scale of 1–10).
- Existence, transparency, availability and regular updating of a state land inventory.
- Existence and application of clear, fair and transparent rules for state land management (including regulations for leases, concessions, etc.).
- Existence and application of clear, transparent and well-functioning procedures of dispossession of state

land, including mechanisms for control and sanctions.

- Degree of public participation, e.g. in case of land-use zoning, boundary delimitation, adjudication or systematic registration (on a scale of 1–10).
- Number of annual cases of corruption in court decisions with respect to land disputes.
- Number of annual forced evictions.
- Number of land conflicts resulting from legal pluralism.
- Number of annual cases of embezzlement of customary land by customary chiefs.
- Number of annual cases of embezzlement of state land by state officials.

### **GOOD GOVERNANCE IN LAND ADMINISTRATION DURING PROJECT IMPLEMENTATION**

Some land administration and land policy projects supported by the World Bank or the Gesellschaft für Technische Zusammenarbeit (German Development Agency – GTZ) already include a wide range of activities to improve good governance in land administration and land management; others could be added. Measures to improve good governance in the land sector are:

- introduction of counter offices (front desks);
- introduction of, or improvement in, service standards;
- reform of fee structure, including changes in regulations;
- client surveys;
- introduction of hotlines and complaints boxes;
- public access to the cadastre via the Internet;
- people's participation in adjudication and demarcation;
- participatory land-use planning and land-use zoning;
- improvements in state land management.

Additional measures dealing with informal settlements could also be considered in order to fight weak governance, such as:

- regularization, formalization and legalization of informal settlements;

- anti-eviction campaigns, moratorium, social concessions, land sharing, etc.

Finally, measures that improve recognition and transparency of customary tenure will also improve governance in the land sector:

- recognition of customary tenure by statutory law;
- demarcation of stool land boundaries (currently, some first experience from Ghana);
- provision of customary land titles (for men and women).

In the following sections, only measures of the first category are further explained, as they should be considered in any land administration project, while the others are only relevant for certain countries. More details about most of the examples referred to can be found in Zakout, Wehrmann and Törhönen (2006).

### **Counter offices**

Counter offices are thought to bring more transparency. Land registers and cadastral offices are often a chaotic mess, with files lying around, people standing everywhere – nothing looks organized. The muddle facilitates unobserved informal payments to accelerate the service. Counter offices improve orderly interface with the client and reduce bribery (Plate 1). Well-organized front offices – so the common understanding – can therefore contribute significantly to the reduction of corruption and to an increase in the efficiency in registering transactions, and thus to customer satisfaction. Front desks have been introduced in Russia (Moscow), Albania (Tirana), the Lao People's Democratic Republic (eight provincial offices) and in many other countries all over the world. However, experience from the Lao People's Democratic Republic shows that the construction of the physical structure is definitely not sufficient. A customer survey showed that officers still demanded a lot of informal payments. Therefore, front desks can only fight corruption where they are introduced in combination with clear and short procedures as well as transparent fees



PLATE 1

**Counter office at  
a provincial land  
management agency in the  
Lao People's Democratic  
Republic.**

and a code of conduct for officers. Physical structures alone will not solve the problem.

### **Service standards and improved services**

Where procedures are slow, unorganized, not monitored and do not follow clear standards, it is easy for corruption to occur. However, the re-organization of workflows leading to short and fast procedures that are regularly monitored and that are transparent to the public makes it difficult for corruption to occur. Therefore, service standards and improved services are key measures for any good governance approach in land administration.

Examples of good service standards are:

- clearly defined steps in the land registration procedure;
- transparent and fixed fees for registration, notaries, surveying, etc.;
- use of standard forms;
- public notice on the procedure (posters, leaflets, Web site, etc.);
- complaint mechanisms (regular surveys, hotlines, complaints boxes).

According to World Bank officers, the significant reduction in informal payments at the new desk offices in the land registration offices in Moscow is probably because of the improved workflow, which is monitored by the head of the office to ensure that customers do not wait longer than the specified time. In Thailand, a one-day standard time for land registration

has been introduced. This can work as the number of staff of each office is determined by the average number of transactions, and therefore prevents work overflow.

In addition, each land office is limited to 100 000 titles. If the number of land titles exceeds 100 000, the office will be divided and a new branch will be established (Zakout, Wehrmann and Törhönen, 2006). In the Lao People's Democratic Republic, a number of posters are used to inform people about the procedure. One of them also includes the time needed for each procedure. However, the client survey showed that this time is often exceeded. Any service standard requires monitoring and sanctions in the event of non-fulfilment. In addition, as important as, or even more important than, public displays of the duration of certain services is information on the fees. The land registration office in Tirana, Albania, provides very good information on this aspect.

### **Reform of fee structure**

As the example from the Lao People's Democratic Republic shows (Box 1), it is highly important to reform fee structures. In some countries, either too many decrees dealing with fee and taxes exist or there are too many exceptions, special cases and categories for which special rates apply. Although the objective might have been in many cases to be fair and

### BOX 3

#### Insights from a client survey in the Lao People's Democratic Republic

Customers of a land registration agency in the Lao People's Democratic Republic gave the following recommendations and suggestions for improvement – proving a very good understanding of what is going on and how the situation could easily be improved (Wehrmann, Soulivanh and Onmanivong, 2006):

- Provide faster services.
- Recruit more staff to serve the clients.
- Reduce too many meetings, and pay attention to the clients.
- Be more careful in handling clients' matters and documents (too many losses!).
- Provide the right comments to the right issue or problem.
- Be more punctual in starting work.
- Reduce the level of bribery.
- Do not keep the documents for months and ask extra money from us for returning our papers.
- Provide fairness to everyone equally in terms of services (not based on money in the pocket).
- Be more knowledgeable in the area that the staff are responsible for.
- Be able to inform the clients when the document is done/lost.
- Reduce the amount of fees paid by the clients.
- Reduce the number of sections where fees have to be paid / fewer steps, fewer people involved.
- Provide clear and concise instructions for paying fees / clear and transparent fees.
- Have a stricter boss and better human resources control.
- Work and responsibility should come first for all staff / code of conduct.
- Make the process easier.
- Give clear instructions on how to complete documents.
- Inform about the exact time needed and give clear appointment for the next visit (do not say "tomorrow" and then another "tomorrow").
- Give clear information/instructions on what documents are needed.
- Set up a queue clear and neatly.
- Introduce better record-keeping to allow other staff to continue the case if the person in charge is not in the office.
- Abolish parking fees.
- Staff should be more polite.
- Send documents home on request.
- The process should be done in one day, where possible.
- Dismiss staff who cannot work and hire new staff.
- Try to reduce bribery in this office at all levels, which is the main thing/activity in this office.

to recognize differences in wealth (kind of land use, and type of property), in the end it simply increases non-transparency and, thereby, allows for corruption. Land administration projects should revise fee and tax structures. Sometimes, additional confusion is created through fees that rather have the function of a tax as they simply exist to generate state revenue and not to cover government costs for a certain service. In this case, a re-organization of fees and taxes might be needed, based on a

clear cost-benefit analysis and transparent documentation on which payment is to cover costs and which one to increase the state budget (preferably, it should state for what purpose the tax money will be used).

#### Client survey

Client or customer surveys are becoming increasingly popular as they give a very good insight about the existence of petty corruption. Recent experience has been gained in projects supported by the World

Bank in Albania and Romania as well as in a GTZ-supported project in the Lao People's Democratic Republic. This kind of survey helps to gain insight into:

- the level of awareness and knowledge of customers regarding service standards of cadastre and land registration offices;
- the performance of the cadastre and land registration offices in delivering their services;
- the degree of client satisfaction with the operation of the system;
- stakeholders' views of shortcomings in the functioning of the system.

The survey questions generally focus on the following topics:

- waiting and turn-around time;
- official and non-official costs involved;
- clients' satisfaction with the services provided and recommendations for improvement.

Although client surveys give valuable information on effectiveness and details on corruption, they only allow comments to be obtained from those who become involved in the formal sector, i.e. those who register the land. To be able to also include those people who avoid registration, a household survey or landowner survey can be conducted. One such survey conducted in the Lao People's Democratic Republic (Box 3) gave very good additional information on why people avoid the formal system – mainly owing to weak governance.

### Hotlines and complaints boxes

Hotlines (Plate 2) and complaints boxes are a good way of receiving feedback from customers at national and local level. Some people prefer complaints boxes as these are more anonymous. However, both only have a positive impact if “the person who receives the complaint changes something or explains to other people what he will do, not just keep our letter” (comment from a client survey)!

### Public access to the cadastre via the Internet

In Croatia and Lithuania, the public can easily access the digital cadastre and land registry through the Internet. The benefits are that data are easy to access and people



PLATE 2

**Poster informing about a customer hotline (Real Estate Cadastre and Registration Project, State Authority for Geodetic Works, The former Yugoslav Republic of Macedonia).**

do not have to pay informal payments to obtain them. This system also improves transparency and saves time as people do not have to go to land registration offices for a simple data request. This reduces queuing and again gives fewer incentives to ask for speed-up money. However, when introducing e-governance to land registration, much attention has to be given to data security and data management safeguards in order to avoid misuse.

### Participatory land inventory, boundary mapping and adjudication as well as participatory land-use planning or zoning

The objectives of people's participation in a land inventory, in boundary mapping, in land adjudication, and in land-use zoning or planning are to ensure transparency, to protect people's rights, and to prevent fraud and corruption. Recent examples can be taken from:

- Cambodia, where the rural population has regularly been involved in land adjudication which included a public display of the land inventory together with a map showing the parcel boundaries;
- the Lao People's Democratic Republic, where the rural population has been involved in land-use planning that was conducted in combination with land allocations owing to privatization of land);
- Indonesia, where a community land inventory and boundary mapping has been done following the tsunami.

In all three cases, people received a formal document in the end proving their legal ownership rights, ranging from temporary land-use rights in the Lao People's Democratic Republic to titles in Cambodia and in Bandah Aceh (Indonesia).

#### **Improvements in state land management**

All the above-mentioned activities address petty corruption only. To fight grand corruption, a reform in state land management is normally necessary.

Individual measures could include:

- the consolidation of all state land management under one agency;
- the preparation of an inventory of state land;
- the development of clear and transparent procedures to manage, lease and transfer state land (including model contracts);
- the recovery of state assets.

Even where – as in the case of Kenya – a comprehensive report on state capture, proposing/asking for hard measures to punish the individuals responsible and to force them to give the land back to the state did not result in the recovery of state land, it did at least change tremendously the behaviour of state officials dealing with state land. There are far fewer irregularities now compared with the past.

#### **CAPACITY BUILDING FOR GOOD GOVERNANCE IN LAND ADMINISTRATION**

All the measures proposed or introduced by a project will only have a long-term impact

if people in all land-related institutions in the country are trained in governance matters. This requires not only new training programmes and changes in the curricula of existing education and training (including new subjects such as governance or business/public administration in order to create future land administrators with management skills who can legally build better-financed institutions), it also needs a new approach to capacity building. How do you want to stop someone from abusing his/her position? How do you convince students never to take advantage of an opportunity – although this is regularly done by most officers?

This can only be achieved if capacity building offers more than knowledge and tools. Good governance-oriented training should focus on knowledge, skills and attitudes. While knowledge can be taught more or less easily, and skills can be trained, attitudes need to be addressed sensitively. Concerning the knowledge to be transferred, it should include unconventional approaches that reflect poor people's realities. Skills must fit into the country's technological setting and consider the financial limits. To achieve a change in attitudes, students and trainees have to be sensitized and have to reflect on their own attitudes. This can be achieved in the form of role-plays and partner exercises in a positive environment where confidence has been created. The way lecturers and trainers teach has to reflect the attitudes they want the participants to incorporate.

Current capacity building is often marked by outdated, conventional, expensive models taught in a rather top-down way and lacking practical application. However, the graduates of these training institutions are the ones who define the land administration procedures and form their institutions. If we want to change them, we have to start with new forms and new contents of capacity building.

#### **CONCLUSIONS AND RECOMMENDATIONS**

While there are many possible measures to remedy administrative weaknesses and

quite a range of measures to combat petty corruption, rather few actions have been taken so far to fight grand corruption. Consequently, more focus is needed on state land management, such as state land allocation, privatization of state land, and state land leases and concessions.

My personal impression is that sometimes governments even welcome project activities that focus on weak governance and petty corruption as it helps them to hide grand corruption. They can show that they are fighting corruption, but without losing their own additional sources of income. This can be seen as an opportunity to address petty corruption, but if project activities stop there, they would not achieve justice. Therefore, the recommendation is that land administration projects should always include a land policy component and include a governance assessment in the project preparation phase – looking at petty and grand corruption.

However, the question remains as to how to deal with grand corruption and how to address “the big five” (high-ranking

politicians [president/ministers], the military, the courts, the police, and parties).

Slowly but surely, changes can be achieved through capacity building and change management, given that these focus not only on updated and adequate knowledge and skills but also include a focus on attitudes.

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## **Bonne gouvernance et gestion des terres publiques**

*La nature des relations avec le pouvoir, notamment entre l'État et la société civile, est au cœur de la gestion des terres publiques. Il s'agit en particulier des relations, bonnes ou mauvaises, établies pendant les périodes de nationalisation, de colonisation, de restitution ou de privatisation pendant la transition politique. La mise en commun de l'expérience acquise par d'autres pays en matière de réforme du secteur foncier est une nécessité et d'un intérêt primordial.*

*De nombreux pays développés, en période de post-transition ou en développement, ont entamé une révision complète du rôle du gouvernement dans leurs sociétés, notamment en réformant le secteur public et les principes de délégation des pouvoirs aux autorités locales en matière de gestion des biens fonciers publics. Les principes généraux d'une «bonne» gestion des biens collectifs ayant été définis, les gouvernements se doivent de les adopter afin de renforcer leurs systèmes de gestion de la propriété publique et améliorer leur efficacité et leur transparence.*

*La réforme de la gestion des terres publiques doit contribuer à l'élaboration d'un ensemble de principes de développement fondamentaux, notamment la réduction de l'extrême pauvreté, la réalisation des Objectifs du Millénaire pour le développement, l'accomplissement de progrès en matière de bonne gouvernance et l'amélioration de la gestion fiscale du secteur public. Mettre en place une bonne gouvernance en matière de gestion des terres publiques impose en premier lieu d'établir une politique qui encadre l'intervention des gouvernements dans les questions foncières. Toute amélioration dans ce domaine passe inévitablement par la formulation d'une politique explicite de gestion des terres publiques conforme à la politique foncière et à une politique fiscale qui fixe des objectifs clairs en termes de croissance économique, d'équité, de développement social, de gestion durable de l'environnement et de transparence fiscale.*

## **Buena gestión pública de tierras demaniales**

*La historia de las tierras de dominio público es una historia de relaciones de poder, de la relación entre el Estado y la sociedad civil así como de experiencias —tanto buenas como malas— en períodos de nacionalización, colonización, restitución o privatización durante la transición política. Existe una necesidad y un interés claros en intercambiar experiencias sobre la labor en curso de reforma del sector de las tierras demaniales en todo el mundo.*

*Muchos países desarrollados, países en fase de post-transición y países en desarrollo han emprendido una reevaluación a fondo de la función del gobierno en sus sociedades. Existe una tendencia a reformar el sector público y a delegar la adopción de decisiones sobre las tierras públicas en las entidades locales. Se han establecido principios generales de «buena» gestión de bienes que las administraciones deben adoptar para reforzar sus sistemas de gestión de los bienes públicos y aumentar su eficiencia y transparencia.*

*La reforma de la gestión de las tierras públicas debe contribuir a un conjunto básico de principios de desarrollo, a saber, la reducción de la pobreza, el logro de los Objetivos de Desarrollo del Milenio, el progreso en la buena gestión pública y la transparencia de la gestión pública de los impuestos. La buena gestión pública de las tierras demaniales implica, en primer lugar, el establecimiento de una política adecuada con respecto a cómo debería intervenir la administración en las cuestiones relativas a la tierra. El elemento más decisivo para orientar la mejora en este ámbito es la formulación de una política explícita de gestión de las tierras públicas en consonancia con la política de tierras y la política fiscal que establezca con claridad los objetivos relacionados con el crecimiento económico, la equidad y el desarrollo social, la sostenibilidad ambiental y la transparencia de la política fiscal.*